

## **Chapter 4: Alcohol Beverages**

### **Article 1: In General.**

#### *Section 1: Purposes*

The purposes of this Chapter shall include, without necessarily being limited to, the following:

- (a) Compliance with and effectuation of the general State law;
- (b) Prevention and control of the sale of alcohol beverages by unfit persons;
- (c) The protection of schools, homes, churches, parks, and other institutions;
- (d) Promotion of appropriate land use and zoning and the effectuation of the City's land use and zoning policies;
- (e) Protection of the public health, safety, and welfare.

To the maximum extent possible under State and Federal law, the business of selling alcohol beverages shall under this Chapter be considered to be a privilege to be accorded in conformity with the foregoing and other public policies of the City, rather than a right.

#### *Section 2: Definitions*

- (a) Unless a contrary intention is clearly apparent from the context, any term used in this Chapter shall have the same meaning as when used in a comparable provision of the "Georgia Alcohol Beverage Code," O.C.G.A. §§ 3-1-1 to 3-12-3.
- (b) As used in this Chapter the singular and the plural shall each include the other, the masculine and feminine shall each include the other, and any verb tense may include any other verb tense.
- (c) As used in this Chapter the term "may" is permissive and the term "shall" is mandatory.
- (d) Unless a contrary intention is clearly apparent from the context, the following terms used in this Chapter shall have the following meanings:

*Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

*Alcoholic beverage* means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

*Alcohol beverage caterer* means any retail dealer licensed pursuant to the Alcohol Beverage Ordinance of the City of Dunwoody who provides alcohol at authorized events or functions, special events, or special events facilities.

*Beer or malt beverage* means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.

*Bottle club* means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

*Brewpub* means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form.

*Chief of Police* means the Chief of Police of the City of Dunwoody, or his designate.

*Church* means any permanent place of public religious worship.

*City* means the City of Dunwoody and when used in a geographical sense means the territorial limits of the City of Dunwoody.

*Distilled spirits or spirituous liquor* means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume including, but not limited to, all fortified wines

*Eating Establishment* means an establishment which is licensed to sell or otherwise dispense distilled spirits, malt beverages, or wines and which derives at least sixty (60) percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

*Food Caterer* means any person who prepares food for consumption off the premises.

*Fortified wine* means any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy.

*Full service kitchen* means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the city manager or his designee.

*Immediate family* of a person means all persons related to such person by consanguinity or affinity within the first degree, as computed according to the law of Georgia.

*Interest* includes any pecuniary interest and any ownership interest, whether present or future, whole or partial, legal or beneficial, contingent or vested, direct or indirect, and any right, power, or authority of control.

*Licensee* means the individual to whom a license is issued or, in the case of a partnership, corporation, or company, all partners, officers, members, managers, and directors of the partnership, corporation, or company.

*Manufacturer* means any maker, producer, or bottler of an alcoholic beverage. The term also means:

(A) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;

(B) In the case of malt beverages, any brewer; and

(C) In the case of wine, any vintner.

*Package* means a bottle, can, keg, barrel, or other original consumer container.

*Person* means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

*Registered Agent* means that individual, who is a resident of DeKalb County, Georgia and at least twenty-one (21) years of age, required to be designated by a licensee to receive any process, notice, or demand required or permitted by law or under this Chapter to be served upon a licensee or owner.

*Retail consumption dealer* means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

*Wine* means any alcoholic beverage containing not more than 21 percent alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. Wine includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at the point in the manufacturing process when it conforms to the definition of wine contained in this section.

## **Article 2: Licensing.**

### *Section 1: License Required*

- (a) It shall be unlawful for any person to sell, offer for sale, or otherwise dispense any alcohol beverages within the City except under a valid license issued under this Chapter and in compliance with the provisions of this Chapter.
- (b) All licenses issued pursuant to this Chapter shall have printed on the front: “This license is a mere privilege subject to being revoked and annulled and is subject to the laws of Georgia and the existing and any further ordinances of the City of Dunwoody.”
- (c) The applicant for a license or permit, for which provision is made in this Chapter, shall be subject to all state laws and regulations and to all City ordinances and regulations dealing with general licensing and consumption on the premises of alcohol beverages, except as may be otherwise specifically provided in this Chapter.

### *Section 2: Retail Package Licenses*

Applicants may apply for one or more of the following type retail licenses:

- (a) Package malt beverage license: Retail sale of malt beverages in the original package.
- (b) Package wine license: Retail sale of wine in the original package.
- (c) Package distilled spirits license: Retail sale of distilled spirits in the original package.
- (d) Ancillary Wine Tasting Provisions

Upon filing an application and payment of a filing fee and a permit fee and after investigation by the police department and review by the finance department a permit may be issued to a licensed retail package wine dealer or licensed wine wholesaler to hold a wine tasting. The permit shall allow the applicant to provide samples of wine to the public for consumption at a location which meets legal requirements for on-premises consumption, under the following conditions:

- (1) The applicant for a wine tasting must hold a valid current wine license in the state.

The application shall be accompanied by the requisite fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.

### *Section 3: Retail Consumption on the Premises Licenses*

Four classes of retail consumption on the premises licenses are available. Unless otherwise specifically provided in this Chapter, retail consumption on the premises licenses are available only to establishments having a full-service kitchen prepared to serve food every hour they are open.

- (a) Full Pouring License: Retail sale of distilled spirits, wine, and beer by the drink
- (b) Limited Pouring License: Retail sale of wine or malt beverages by the drink.
- (c) Limited Pouring License: Retail sale of wine and malt beverages by the drink.
- (d) Brewpub: See Article 1, Section 2(d) of this Chapter.

The application shall be accompanied by the requisite fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council. Sunday sales may be made, upon payment of an additional fee, as set by Resolution of the City Council, provided the licensee otherwise meets the qualifying requirements for Sunday sales. Service from more than one bar at a licensed location may be made upon payment of an additional fee per bar, as set by Resolution of the City Council.

### *Section 4: Wholesale Licenses*

- (a) Any wholesale dealer in alcohol beverages who is licensed by the State of Georgia and who does not have a place of business in the City shall be granted a license to distribute such beverages in the City upon application for such license to the City Manager, submittal of an annual renewal affidavit, and a statement that he understands the alcohol beverage rules and regulations of the City and the conditions under which retail licenses are issued. Distributors whose principal place of business is a location other than the City of Dunwoody shall pay a registration fee of \$100.00 as authorized by O.C.G.A. §3-5-43 (or such fee as may be authorized by any future amendment or revision thereto).
- (b) Any wholesale dealer in alcohol beverages who is licensed by the State of Georgia and who has a place of business in the City shall procure a license under the same provisions applicable to retail licensees. The application for a resident wholesale dealer's license shall be accompanied by the requisite fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.
- (c) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (d) No retailer shall knowingly and intentionally purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall knowingly and intentionally sell any distilled spirits to any person other than a retailer licensed.

- (e) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

*Section 5: Alcohol Beverage Caterers*

(a) License requirements – Resident Caterers.

- (1) Any resident caterer who possesses a valid license from the City of Dunwoody to sell or otherwise dispense malt beverages, wine or distilled spirits by the drink at a fixed location within the City may apply for an off-premises license that permits sales at authorized catered event(s) or function(s).
- (2) Each off-premises catering license, authorized herein, shall be valid only for the event for which the license is issued. The fee for each license shall be set by Resolution of the City Council, and this fee amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.
- (3) It shall be unlawful for any person to engage in, carry on, or conduct the sale or distribution of alcohol beverages off-premises and in connection with a catered event or function without first having obtained a license as provided herein.

(b) Permit Requirements – Nonresident Caterers

- (1) A nonresident alcohol beverage caterer shall submit an application for an off-premises event permit to the City Manager. The fee for each such permit shall be \$50.00 as authorized by O.C.G.A. § 3-11-3 (or such fee as may be authorized by any future amendment or revision thereto).
- (2) An application for an event permit shall include the name of the caterer, the date, address, time, and name of the event(s) and the quantity and type of alcohol beverages to be transported from the licensee's primary location to the location of the authorized catered event(s) or functions(s).
- (3) The original event permit shall be kept in the vehicle transporting the alcohol beverages to the catered event(s) or function(s).
- (4) It shall be unlawful for a licensed alcohol beverage caterer to distribute, sell, or otherwise dispense alcohol beverages off-premises except as authorized by the event permit.

- (c) A licensed alcohol beverage caterer may sell or otherwise dispense only that which is authorized by his alcohol beverage license. For example, if the alcohol beverage

caterer possesses a valid license to sell malt beverages, he may sell or otherwise dispense only malt beverages at the authorized catered event or function.

- (d) Sunday sales. An alcohol beverage caterer wishing to cater an event or function on Sunday must possess a valid Sunday sales license and comply with the requirements of State law with respect to the service of alcohol beverages on Sunday.
- (e) Excise taxes are imposed upon the sale of alcohol beverages by a resident caterer as provided in Article 8 of this Chapter.
- (f) Excise taxes are imposed upon the total of individual alcohol beverage drinks served by a nonresident caterer in the amounts set forth in Article 8 of this Chapter and shall be paid within thirty (30) days after the conclusion of the catered event or function.

#### *Section 6: Non-Profit Civic Organization Temporary Permit*

- (a) To be eligible to apply for a temporary permit to sell alcohol beverages at an authorized event, a bona fide non-profit organization must be the applicant; a non-profit authorization letter (Federal Form 501-C) must be produced; any required event permit must be obtained; and the authorized event for which the event permit is issued must be associated with and benefit the cause of a charitable or civic organization.
- (b) Pursuant to State law, a temporary permit shall authorize the organization to sell alcohol beverages for consumption only on the premises for a period not to exceed one day, subject to all laws and ordinances regulating the time for selling such beverages; the temporary permit shall be valid only for the place specified in the permit; and no more than six (6) such permits may be issued to the applicant organization in any one calendar year.
- (c) Each application for such a temporary permit shall be accompanied by a nonrefundable fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.

#### *Section 7: Special Event Temporary Permit*

- (a) A retail consumption dealer may apply for an on-premise special event temporary permit. An on-premise special event temporary permit shall authorize the retail consumption dealer to sell alcohol beverages for consumption on the premises for a period not to exceed a two hour extension of the hours of operation specified in Article 5, Section 5 for the specified day.
- (b) No more than six (6) such permits may be issued to any location in any one calendar year.

- (c) Each application for such a temporary permit shall be accompanied by a nonrefundable fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.

#### *Section 8: Duration of Licenses*

All licenses, except as otherwise indicated, issued under this Chapter shall be issued on a calendar year basis, and all licenses shall expire at midnight on December 31 of the year for which they are issued. License fees shall be prorated as follows: New applications received after January 1<sup>st</sup> shall be assessed a license fee based upon the number of months remaining in the calendar year and partial months shall count as a full month.

#### *Section 9: Application*

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the finance department.
- (b) The application shall include but not be limited to the following:
  - (1) The name and address of the applicant;
  - (2) The proposed business to be carried on;
  - (3) If a partnership, the names and residence addresses of the partners;
  - (4) If a corporation, the names and addresses of the officers;
  - (5) The name and address of the agent for service of process;
  - (6) The name and address of the manager;
  - (7) The names and addresses of all stockholders holding more than ten (10) or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
  - (8) Such other information as may be required by the finance department and/or the police department. If the manager changes, the applicant must furnish the finance department and the police department with the name and address of the new manager and other information as is requested within ten (10) days of such change.
- (c) All applications for a package liquor license must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses of lessor or sublessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information



called for by the finance department to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the finance department and failure to so file within a period of ten (10) days after this change is made shall be grounds for the city to cancel the license.

- (d) All applicants shall furnish all data, information and records requested of them by the finance department or the police department and failure to furnish this data, information and records within thirty (30) days from the date of the request shall automatically dismiss, with prejudice, the application. By filing an application, applicants agree to produce for oral interrogation any person requested by the finance department or the police department and considered as being important in the ascertainment of the facts relative to the license. The failure to produce the person within thirty (30) days after being requested shall result in the automatic dismissal, with prejudice, of the application. An application shall not be considered complete until the applicant has furnished all data, information and records requested of them by the finance department or the police department.
- (e) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (f) Each applicant and licensee shall consent to and authorize a fingerprint analysis and investigation.
- (g) The application form shall be accompanied by a copy of the lease to the premises, or proof of ownership of the premises, or proof of other authorization for use of the premises.
- (h) Each applicant and licensee authorizes the City and its agents to secure from any court, law enforcement agency, or other public agency his criminal and civil history and to use such information in determining whether the license applied for shall be issued. Each applicant further authorizes the City and its agents to use such information in any public hearing with respect to the license applied for, either before or after the issuance of the license. Each applicant waives any right that he would otherwise have to preclude the City or its agents from obtaining and using such information, and each applicant further waives any liability of the City or its agents for obtaining and using such information.
- (i) Separate applications must be made for each location, and separate licenses must be issued for each location.

#### *Section 10: Joint Responsibility*

If a partnership, each partner shall be responsible for the actions of the named licensee and the conduct of the licensed business. If a corporation, the corporation, its officers and directors shall be responsible for the actions of the named licensee and the conduct of the licensed business. If a nonprofit organization, its officers, directors, or governing authority shall be responsible for the actions of the named licensee and the conduct of the licensed business.

*Section 11: Eligibility for License*

- (a) Every applicant shall, prior to applying for a license, read and familiarize himself with the provisions of this Chapter, and the application shall constitute a certification that applicant has done so. Every licensee shall maintain a copy of this Chapter on the licensed premises and shall instruct each employee engaged in the sale or handling of alcohol beverages concerning the relevant provisions of this Chapter.
- (b) An applicant shall be active in the operation of the licensed business and shall be personally present on the licensed premises sufficiently to assure compliance with the provisions of this Chapter. For purposes of this Section, a licensee shall not be considered active unless he is an owner, stockholder, or full-time employee of the licensed business and is present on the licensed premises a minimum of ten hours per week.
- (c) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individual(s) who are not citizens of the United States or aliens lawfully admitted for permanent residence. If, an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to insure that a license is not granted to an ineligible person or entity.
- (d) No person, including members of a retail dealer licensee's immediate family, shall be issued, nor shall have a beneficial interest in, more than two package distilled spirits licenses issued in this State.
- (e) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any felony within the last ten (10) years, has been on felony probation or parole within the last five (5) years, or released from prison on felony charges within the last five (5) years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.
- (f) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten (10) years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five (5) years from a prior driving while intoxicated conviction, and sale of alcohol.
- (g) A licensee shall not have had revoked, within the two (2) years preceding his application, any license to sell alcohol beverages issued by any governmental entity.

- (h) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of eighteen (18).
- (i) A licensee shall have, and continuously maintain, as a registered agent a resident of DeKalb County, Georgia upon whom may be served any process, notice or demand required or permitted by law or under this Chapter to be served upon the licensee or owner.

#### *Section 12: Application Fee*

- (a) Each application for a license under this Chapter shall be accompanied by a non-refundable application fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council. Application fees shall be paid at the time the application is filed and shall not be refunded under any circumstances.

#### *Section 13: Procedure for Consideration of Application; Temporary Licenses*

- (a) The City Manager shall promptly refer a copy of each application to the Chief of Police or his designee for a thorough investigation. The Chief of Police or his designee shall report his findings to the City Manager. Such finding shall include a recommendation as to the qualifications of the applicant. The City Manager shall further have the responsibility and authority to request additional information as may be determined to be necessary in order for the City Manager to accept the application as complete prior to its submission to the City Council.
- (b) A temporary license for a full pouring license, a limited pouring license, package malt beverage license, package wine license, and package distilled spirits may be issued by the City Manager for a period of up to sixty (60) days provided the City Manager is satisfied that the applicant substantially complies with the provisions of the applicable ordinances and meets required qualifications and the denial of a temporary license would create undue hardship upon the applicant, such as the closing of an existing business or delaying of the opening of a new business. No right or property shall vest in any applicant by virtue of the issuance of such permit. The applicant shall sign an acknowledgment that the temporary license is a mere accommodation and may be revoked, with or without cause, by the City Manager at any time.
- (c) The fee for issuance of a temporary license shall be set by Resolution of the City Council, and this fee amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.

#### *Section 14: Denial of Application*

- (a) After a hearing, should the City Council deny an application, written notice of the denial shall be provided to the applicant by the City Manager, shall set forth the reason(s) for the denial, and advise the applicant of the right to appeal.

- (b) Any decision by the City Council denying an application shall be final unless the applicant applies to the Superior Court of DeKalb County by filing a Petition for Writ of Certiorari within thirty (30) days of the decision rendered by the City Council.
- (c) In all instances in which an application is denied, the applicant may not reapply for a license for at least one year from the final date of the denial.

*Section 15: Transferability of License*

- (a) Except as provided in this Section, no license shall be transferable to any other person or location. All applications seeking a transfer of a license in any respect shall be made upon application forms provided by the City Manager and shall be accompanied by a non-refundable fee in an amount as set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.
- (b) If a licensee seeks to move his place of business from the licensed premises to another place within the City, application shall be made as for an original license.
- (c) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of thirty (30) days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first, provided however that the finance department must be notified of the licensee's death within ten (10) days of the death or the license shall automatically terminate on the eleventh day following the death of the licensee.
- (d) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of thirty (30) days from the date of surrender, or from the date determined to be the date of severance, provided however that the finance department must be notified of the change within ten (10) days of the severance or the license shall automatically terminate on the eleventh day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (e) Nothing in this section shall prohibit one (1) or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one (1) or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten (10) or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.

- (f) Except as provided herein, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this division automatically, without the necessity of a hearing.
- (g) Violation of this section shall result in revocation of the license being used and a fine of one thousand dollars (\$1,000.00) each on the new ownership and the old ownership.

*Section 16: Sale or Disposition of Licensed Business; Temporary License*

- (a) If any licensee withdraws from, sells, or otherwise transfers the licensee's interest in the licensed business, the licensee shall immediately notify the City Manager.
- (b) In the case of such a withdrawal, transfer, or sale, the City Manager may issue a temporary license as provided in Section 13 of this Article to the successor in interest, if the successor in interest has properly completed an application and paid the appropriate fee. The temporary license shall be valid for up to sixty (60) days or until the application for a permanent license is granted or denied by the City Council, whichever ever first occurs.

*Section 17: Notice*

Except as may otherwise be specifically provided in this Chapter, any required notice may be delivered by hand or posted by certified mail, in which event delivery shall be deemed to take place on the third (3<sup>rd</sup>) day following the date of deposit in the United States mail.

*Section 18: Collection of Sums Due*

As to any failure to pay any sum due for fees or taxes under this Chapter, the City may issue an execution against the licensee and his property for the amount of the delinquent fee or tax in addition to any other remedies the City may have.

**Article 3: Suspension or Revocation of License; Hearing.**

*Section 1: Suspension or Revocation of License*

- (a) A license may be suspended or revoked by the City for any violation of this Chapter; for any violation of State laws and regulations relating to alcohol beverages; for any material misrepresentation or omission in the application for the license; or if the licensee or the licensed business ceases to meet the eligibility requirements for licensure.
- (b) Whenever the state revokes any permit or license to sell alcoholic beverages, the City license shall thereupon be automatically revoked. The police department, upon notice of such revocation from the finance department, shall take the necessary steps to see that signs are removed and that all alcoholic beverage sales cease.

- (c) When suspension of a license is permitted under this Chapter, but no specific period of suspension is mandated, the following guidelines shall apply:
  - (1) First suspension in a twenty-four (24) month period of time shall not exceed thirty (30) days.
  - (2) Second suspension in a twenty-four (24) month period of time shall not exceed sixty (60) days.
  - (3) Third suspension in a twenty-four (24) month period of time shall cause Revocation of the license.
- (d) Prior to the suspension or revocation of a license by the City, the City Manager shall give written notice to the licensee of the time, place, purpose of the hearing, and a statement of the charge(s) upon which the hearing before the City Alcohol License Review Board shall be held in accordance with Section 2 hereafter. Service of such notice shall be by personal service on the Registered Agent. If personal service fails, the notice shall be mailed by certified mail to the Registered Agent at the address provided and to the named licensee at the licensed premises. Delivery shall be deemed to take place on the third (3<sup>rd</sup>) day following deposit in the United States mail.

*Section 2: License Review Board: Hearings*

- (a) There is hereby established a License Review Board (“Board”) consisting of five (5) members appointed by the Mayor and subject to approval by the Council. Each member shall serve a term of four (4) years, except that upon appointment of the initial members of the Board, the initial terms may be staggered.
- (b) The Board shall have the following duties:
  - (1) To hear deferred applications or appeals from administrative decisions by the City Manager with regard to issuance, suspensions, or revocation of licenses, transfers, renewals, change of ownership, or other matters affecting such licenses or decisions by the City Manager pursuant to this Chapter.
  - (2) To hear appeals with regard to issuance or renewal of employee work permits.
  - (3) To hear any matter involving revocation or suspension of a license or other disciplinary action against a licensee or employee under a work permit.
  - (4) To consider and act upon any other matter specifically delegated to the Board by City ordinance, resolution, or action of the Council.
- (c) Applicants or licensees shall be given written notice of the date, time and place when the Board will consider the respective matter. The applicant and interested parties shall be afforded the opportunity to be heard by the Board and present evidence to

the Board prior to making its decision. Except as may be otherwise specifically provided, no alcohol beverage license having been issued shall be suspended or revoked except for due cause, as defined in this section, until after a hearing and upon written notice to the holder of such license of the time, place, purpose of the hearing, and a statement of the charge or charges upon which the hearing shall be held. Ten (10) days notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the Board may deem the circumstances to justify. Due cause for the suspension or revocation of license shall consist of the violation of any laws or ordinances regulating the business; the violation of any state or federal law; any reason which would authorize the City to refuse the issuance of a license; or any violation of this Chapter. Further, the police department shall notify the City Manager if the licensee or anyone in the employ of a licensee is:

- (1) Being charged with or arrested for selling alcohol beverages:
  - (A) To an underage person or persons; or
  - (B) On Sunday without necessary Sunday sales license; or
- (2) Being convicted of selling alcohol beverages to an intoxicated person or persons pursuant to O.C.G.A. §3-3-22 during the current license year.

Once the City Manager becomes aware of such charge, charges, arrest, or conviction, he shall place the matter before the Board for hearing. The Board, at said hearing and after receiving evidence, may order the license to sell or serve alcohol beverages be suspended or revoked if the evidence so warrants. All decisions of the Board shall be in writing, and a copy shall be furnished to the applicant or licensee.

- (d) The Board shall have the authority to hear or determine any matter set forth in this Chapter unless specifically prohibited therefrom.
- (e) Upon close of the public hearing, the Board shall reach a decision on the matter before it, and the decision of the Board shall be final unless the applicant, licensee, or permit holder appeals the decision to the City Council within ten (10) days of the date of its written decision. The appeal shall be in writing and filed with the City Clerk. Within thirty (30) days of the filing of the appeal and at a regularly scheduled meeting, the Council shall conduct a de novo hearing to hear evidence and, at the conclusion of such hearing, shall render a decision to uphold the decision made by the Board, reverse the decision made by the Board, or in its discretion, modify the decision made by the Board.
- (f) The decision of the Council as rendered on an appeal under this Article shall be final unless the applicant, licensee or permit holder applies to the Superior Court of DeKalb County by filing a Petition for Writ of Certiorari within thirty (30) days of the decision rendered by the Council.
- (g) The Board shall meet at such times as necessary as determined by the Board and shall render its decisions within thirty (30) days after the close of a hearing on any

matter. Three members of the Board shall constitute a quorum, and all decisions of the Board shall require a majority vote of the quorum. Such meeting shall not be scheduled later than thirty (30) days from the time a matter is filed for hearing or appealed to the Board.

- (h) The Board shall select one of its members to serve as chair and one member to serve as secretary, both to serve at the pleasure of the Board. Minutes and records of all proceedings shall be kept and maintained in the office of the City Manager.

#### **Article 4: Location of Sales.**

##### *Section 1: Distance from Churches, Schools, etc*

- (a) No package malt beverage license, package wine license, or consumption on the premises license shall be issued for any place of business which is located within one hundred (100) yards of any school building, educational building, school grounds, college campus, or adult entertainment establishment.
- (b) No package distilled spirits license shall be issued for any place of business which is located within one hundred (100) yards of any church building or alcohol treatment center or which is located within two hundred (200) yards of a school building, educational building, school grounds, college campus, or adult entertainment establishment or which is located within five hundred (500) yards of another licensed package distilled spirits business.
- (c) No package license shall be issued for any place of business which is located within two hundred (200) feet of a private single-family or two-family dwelling in a zoning district that permits single and/or two family dwellings; provided, however, this prohibition shall not apply with respect to a private dwelling located in a zoning district in which alcohol beverage outlets are authorized and which dwelling is on the same street as the premises for which a package license is applied.
- (d) Unless otherwise provided by law, all measurements to determine the distances referred to in this Section shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:
  - (1) From the front door of the structure, as determined by the Director of Community Development, from which alcohol beverages are sold or proposed to be sold; and
  - (2) In a straight path to the front door of the building or to the nearest portion of the grounds, as determined by the Director of Community Development, whichever is applicable under this Chapter.

No license shall be revoked and no application for a license or renewal shall be denied by reason of the method of measurement set out in this subsection, if such



license or license application or renewal application is for premises for which a license was granted prior to the enactment of this Chapter in reliance on another method of measurement.

- (e) Unless otherwise on file with the City, no application for a license shall be approved which does not include, or have attached thereto, a certificate from a registered surveyor which shows a scale drawing of the premises and the location at which the applicant desires to operate an alcohol beverage outlet and which shows, with linear foot measurements where appropriate, such location's compliance or noncompliance with the provisions of this Section, or a certificate from a registered surveyor which states that the subject alcohol beverage outlet meets all of the location and distance requirements of this ordinance, and shows such location's compliance or noncompliance with linear foot measurements where appropriate or required.
- (f) When a license application is for premises not yet constructed or not yet completed, a license may be issued if the application includes the plans for the premises and a surveyor's certificate, as required under subsection (e) of this Section, clearly showing that the premises will, when completed, meet the requirements of this Section.
- (g) If the distance requirements of this Section are met at the time a license is issued, the subsequent opening and operation of a church or school within the prohibited distance shall not prevent the continuance of an existing license or the issuance of a new license to a subsequent owner of the property; provided, however, that as to any new license, the prior license must have been lawful and validly issued at the location at any time during the twelve (12) months immediately preceding the application for the new license.
- (h) As used in this Section, the term "school building" or "educational building" shall apply only to State, County, City or church school buildings and to such buildings at any other schools in which are taught subjects commonly taught in the schools and colleges of this State and which are public schools and private schools as defined in O.C.G.A. § 20-2-690(b). The term "school building" includes only those structures in which instruction is offered. The term "church building" as used in this section shall mean the main structure used by any religious organization for purposes of worship.

## *Section 2: Sales and Consumption on Public Property*

- (a) Except as provided in subsections (b) and (c) of this Section, it shall be unlawful for any person to sell, serve, or otherwise dispense any alcohol beverage in a street, alley, or parking lot commonly used by the public or in any other public place or on public property.
- (b) Private parties and organizations may secure a permit from the City Manager to serve, sell, or otherwise dispense alcohol beverages on property owned or leased by the City of Dunwoody.

- (c) An outdoor festival host holding a special event permit may allow or prohibit alcohol consumption at the outdoor festival in a City park and shall have the right to require that alcohol consumed at the outdoor festival be purchased or obtained from an official outdoor festival vendor. Such authorization and/or limitations shall be set forth on the application for the special event permit.

### *Section 3: Open Area and Patio Sales*

- (a) Except as provided in subsection (b) of this Section, it shall be unlawful for any person to sell, serve, or otherwise dispense alcohol beverages outside the licensed premises structure.
- (b) No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the City. The City shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including but not limited to regulations pertaining to maximum capacity, ingress and egress.
- (c) Nothing contained in this Section shall prohibit a hotel or motel with a consumption on the premises license from making sales and allowing consumption of alcohol beverages in ballrooms, meeting rooms, reception rooms, or patio areas.

## **Article 5: Business Regulations**

### *Section 1: Display of License*

- (a) Each license issued under this Chapter shall at all times be kept in the public area plainly exposed to view upon the licensed premises.
- (b) All retail consumption dealers and retail dealers who sell at retail any alcoholic beverages for consumption on the premises shall post, in a conspicuous place, a sign which clearly reads: "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."
- (c) Each retail business establishment which is licensed to sell alcoholic beverages of any kind shall post in a conspicuous place or places a notice which shall contain the provisions of the laws of this state which deal with the unlawful sale of such items to underage persons and the penalties for violating such laws.

### *Section 2: Purchase and Sales Records*

- (a) Every licensee shall keep and preserve records of all alcohol beverages purchased and sold or otherwise dispensed by the licensee. All consumption on the premises licensees shall keep and preserve records of all food and non-alcohol beverages purchased and sold or otherwise dispensed by them. Such records, more specifically described in subsection (c) of this Section, shall at all times be open for inspection by the City Manager or his designee. These records shall be maintained for a period of

at least three (3) years unless the City Manager determines that no such records exist and it is not financially practical based on the net income of the licensee to require the keeping of such records.

- (b) If the City Manager deems it advisable to conduct an audit of the records of a licensee, he shall notify the licensee of the date, time, and place of the audit. The City Manager may designate the City's Internal Auditor or other person to perform the audit, and the licensee shall cooperate with the audit or be subject to having his license(s) suspended or revoked.
- (c) At the request of the City Manager or his designee, the licensee shall make available the following records required to be kept for at least three (3) years:
  - (1) Monthly income or operating statements;
  - (2) Daily sales receipts showing liquor, beer, wine, and food sales separately (this requirement does not apply to package beer and wine licensees);
  - (3) Daily cash register receipts such as Z tapes or guest tickets;
  - (4) Monthly State sales and use tax reports; and
  - (5) Federal Income Tax Returns.

*Section 3: Sale To, Purchase or Possession by Underage Person*

- (a) Except as otherwise provided in this Section:
  - (1) No person, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcohol beverage to any person under twenty-one (21) years of age.
  - (2) No person under twenty-one (21) years of age shall purchase or possess any alcohol beverage.
  - (3) No person under twenty-one (21) years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining unlawfully any alcohol beverage.
  - (4) No person shall act as an agent to purchase or acquire any alcohol beverage for or on behalf of a person under twenty-one (21) years of age.
  - (5) No person under twenty-one (21) years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcohol beverage.

- (b) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this Section shall not apply with respect to the sale, purchase, or possession of alcohol beverages for consumption:
  - (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
  - (2) At a religious ceremony.
- (c) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this Section shall not apply when the parent or guardian of the underage person gives the alcohol beverage to the underage person and when possession is in the home of the parent or guardian and such parent or guardian is present.
- (d) The prohibition contained in subsection (a)(1) of this Section shall not be violated when a person has been furnished with proper identification showing that the person to whom the alcohol beverage is sold is twenty-one (21) years of age or older. For purposes of this subsection, the term “proper identification” means any document issued by a governmental agency containing a description of the person, the person’s photograph, and the person’s date of birth. Proper identification includes, without being limited to, a passport, military identification, driver’s license, or an identification card authorized under O.C.G.A., §§ 40-5-100--40-5-104. “Proper identification” shall not include a birth certificate.
- (e) This Section shall not prohibit employment of a person under twenty-one (21) years of age in a licensed premises if such employment is lawful under this Chapter.
- (f) In any case where a reasonable or prudent person could doubt whether or not the person to whom an alcohol beverage is to be sold or otherwise furnished is twenty-one (21) years of age or older, the person selling or otherwise furnishing such alcohol beverage shall request to see and be furnished with proper identification as provided in subsection (d) of this Section. The failure to make such request and verification in any case where the person to whom the alcohol beverage is sold or otherwise furnished is less than twenty-one (21) years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcohol beverage did so in violation of subsection (a)(1) of this Section.
- (g) In any case where a person selling or otherwise furnishing alcohol beverages checks for a proper identification, such person shall carefully inspect such identification. If a reasonably prudent person could determine that such identification has been altered and if such person sells or otherwise furnishes alcohol beverages to the holder of such altered identification, then such may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcohol beverage did so in violation of subsection (a)(1) of this Section.
- (h) For purposes of the prohibitions set forth in this Section, a plea of nolo contendere or the forfeiture of bond shall constitute a conviction.

#### *Section 4: Days When Sales Unlawful*

- (a) No licensee shall permit the sale of alcohol beverages on any day or during any time of day when such sales are prohibited by State law.
- (b) No licensee shall permit the sale of alcohol beverages on Sunday unless such licensee is a bona fide eating establishment, caterer, private club, or special events facility as defined in this Chapter and any requisite fee for Sunday sales is paid, the amount of which shall be set by Resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.

#### *Section 5: Hours of Operation*

- (a) Package licensees shall not engage in the sale of alcohol beverages except between the hours of 7:00 a.m. and 12 midnight Monday through Saturday. Package licensees shall not permit their places of business to be open except between the hours of 7:00 a.m. and 12:00 midnight Monday through Saturday, except that where the primary business of a malt beverage package licensee or wine package licensee is other than the sale of alcohol beverages, such restrictive hours shall apply only with respect to the sale of malt beverages or wine.
- (b) Consumption on the premises licensees shall sell alcoholic beverages only between the hours of 9:00 a.m. and 2:00 a.m. on the following day, Monday through Saturday. Sunday sales may be made by eating establishments, as defined herein, or by a private club between the hours of 12:30 p.m. and 2:00 a.m. the following day, provided license for Sunday sales has been granted and the fee paid. Consumption on the premises licensees shall not allow alcoholic beverages sold under this subsection to be consumed or able to be consumed after 2:30 a.m.
- (c) The business hours of wholesale dealers shall be between the hours of 6:00 a.m. and 11:00 p.m. Monday through Saturday. There shall be no sales on Sunday.

#### *Section 6: Prohibited Acts, Sexual Display on Licensed Premises*

- (a) No licensee shall permit the sale of alcohol beverages to any person who is in a state of noticeable intoxication or allow persons who are noticeably intoxicated to congregate on licensed premises.
- (b) No licensee shall permit on the licensed premises any: disorderly conduct; breach of the peace; lewd, immoral, or improper entertainment, conduct, or practices; or noise which is disturbing to the surrounding neighborhood.
- (c) No licensee shall use any person, in any capacity, in the sale or service of alcohol beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or of any

portion of the male or female pubic hair, anus, cleft of the buttocks, vulva, and genitals.

- (d) No licensee shall allow live entertainment where any person appears in the manner described in subsection (c) of this Section, or where such persons (or person) perform(s) acts of or acts which simulate any of the following:
  - (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual act prohibited by law.
  - (2) The caressing or fondling of the breast, buttocks, anus, or genitals.
  - (3) The displaying of the male or female pubic hair, anus, vulva, or genitals.
- (e) No licensee shall allow the use of artificial devices or inanimate objects to perform, simulate, or depict any of the prohibited conduct or activities described above in subsection (d).
- (f) No licensee shall allow the holding, promotion, or sponsoring of any contest, promotion, special night, event, or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct described in subsections (c) or (d) above.
- (g) No licensee shall allow to be shown, displayed, or exhibited any film, still picture, electronic reproduction, or image of any act or conduct described above in subsection (d).
- (h) Nothing contained in subsections (c) through (g) shall apply to the premises of any mainstream performance house, museum or theatre which derives less than twenty (20) per cent of its gross annual income from the sale of alcohol beverages. A mainstream performance house means a building where conventional performances are presented.

#### *Section 7: Delivery and Storage*

- (a) Alcohol beverages shall be delivered to and received at licensed premises in the original container and in a conveyance owned and operated by a licensed wholesale dealer (or a licensed common carrier acting for a wholesaler) with a permit from the City to make deliveries in the City. Alcohol beverages shall be sold at retail only on the licensed premises.
- (b) A retail licensee shall store alcohol beverages only on the licensed premises and at no other place. All stock shall be available at all times for inspection by any authorized agent of the City. Any alcohol beverages found in any retail licensee's stock which were not received from a wholesaler licensed to make deliveries in the City shall be subject to immediate confiscation.

### *Section 8: On-Premises Consumption Unlawful*

- (a) It shall be unlawful for any person to consume any alcohol beverages on premises licensed for the sale of alcohol beverages by the package. It shall be unlawful for any package licensee to open or break the package of any alcohol beverages for a purchaser or to permit the consumption of alcohol beverages on the licensed premises. This Section shall not apply with respect to sales pursuant to a license for consumption on the premises.

### *Section 9: Condition of Premises Requirements*

All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with all regulations governing the condition of premises used for the storage and sale of food for human consumption. All licensed premises shall be open at all times for inspection by the Chief of Police, the Fire Chief, and other authorized agents of the City.

## **Article 6: Employment Restrictions and Handling Requirements**

### *Section 1: Age Requirements*

- (a) Except as provided in subsection (d) of this Section, no wholesale dealer or package licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcohol beverages.
- (b) No consumption on the premises licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcohol beverages.
- (c) A licensed alcohol beverage caterer shall not employ any person under twenty-one (21) years of age who, in the course of such employment would dispense, serve, sell, or handle alcohol beverages.
- (d) This Section shall not prohibit the employment of persons under the above ages on licensed premises where such persons do not dispense, sell, serve, take orders for, or handle alcohol beverages.
- (e) This Section shall not prohibit persons under eighteen (18) years from selling or handling alcohol beverages in grocery stores or supermarkets. For purposes of this subsection, the term grocery stores or supermarkets shall not include convenience stores.

### *Section 2: "Handling" not to Include Bagging and Carrying Out*

For the purposes of this article, the bagging or carrying out of wine or malt beverages in the original package in the course of employment by a grocery store, convenience store, or similar establishment shall not constitute the handling of alcohol beverages.

### *Section 3: Pouring Permit Required*

- (a) An employee pouring permit shall be required for:
  - (1) Any employee who serves in any managerial position; and
  - (2) Any employee of an alcohol beverage caterer who is engaged in handling, selling, or serving alcohol beverages; provided, however, employees whose duties are limited solely to those of busboy(s) or cook(s) or dishwasher(s) shall be excluded.
- (b) No licensee shall employ any person required to have a pouring permit until such person has procured such permit.
- (c) Any person required to obtain a pouring permit shall apply to the City for such permit. Only one pouring permit per individual will be issued for employment at any and all establishments within the City. The permit will be valid for a period of one (1) year and shall be renewed on or before its expiration. Persons applying for the permit shall make themselves available for photographing, fingerprinting, and such other investigation as may be required by the police department. The fee for a pouring permit shall be set by Resolution of the City Council and shall remain in effect until modified or amended by subsequent Resolution adopted by the City Council.
- (d) The Chief of Police may revoke an employee's pouring permit and demand its return where the employee violates the provisions of this Chapter or becomes one who adversely affects the public health, safety, or welfare.
- (e) Any conviction for violation of the provisions of this Ordinance or of the State of Georgia's Alcohol Beverage Code, Title 3 of the O.C.G.A., shall result in the automatic suspension of the pouring permit.
- (g) It shall be unlawful for an employee whose pouring permit has been revoked and upon whom demand for return of the card has been made to refuse to return the card or to alter, conceal, deface, or destroy the card.
- (h) When a person applies for a pouring permit, the Chief of Police or his designee shall have a complete and extensive search made to determine if there is a police record of such person. If there is a record of conduct prohibited by this Chapter or evidence that the person's employment would adversely affect the public health, safety, or welfare, issuance of a permit shall be denied.
- (i) A new search may be conducted on any person issued an employee pouring permit if the Chief of Police receives information which warrants such a new search. If the new search reveals evidence that warrants revocation of the card, the card may be revoked following notice and a hearing.



- (j) When any employee's pouring permit is denied or revoked, the Chief of Police shall issue to the applicant or permit holder a letter stating that the person does not meet the requirements of this Chapter and that upon request the Chief of Police will refer the matter and any evidence the person cares to submit in his behalf to the City Manager for consideration. If the person requests consideration by the City Manager, the entire record will be sent. The City Manager shall consider all matters presented and make a decision as to whether the person qualifies for a pouring permit under this Chapter. In the event the City Manager denies the permit, he shall provide written notice of the denial to the applicant or employee, which shall set forth the reason(s) for the denial. The applicant shall have a right of review of the denial by filing an appeal with the Alcohol License Review Board within thirty (30) days of the denial, pursuant to the procedures established in this Chapter.

#### *Section 4: Licensee to Report Disciplinary Action*

Any licensee who has any disciplinary action taken against him or any of his employees who sell, take orders for, deliver, or handle alcohol beverages by any governmental authority (municipal, county, state, or federal) shall notify the Chief of Police and the City Manager of such action within five (5) days of such action. The following shall be considered to be disciplinary action: any arrest; the issuance of any citation; any indictment, presentment, or accusation; any conviction, including the acceptance of a plea of nolo contendere; any penalty imposed by any regulatory agency; and any other written charge or reprimand against the licensee or any of his employees. The provisions of this Section shall not apply with respect to citations for traffic offenses.

### **Article 7: Requirements for Consumption On-Premises Licenses**

#### *Section 1: Eligibility for License*

- (a) Except as provided in Article 2, Chapter 2(d), a consumption on the premises license may be granted only to the establishments described in this Article and subject to the specified conditions.

#### *Section 2: Hotel and Hotel Room Service*

- (a) In order to be eligible for a consumption on the premises license, a hotel must:
  - (1) Be used and held out to the public as a place where food is served and consumed and sleeping accommodations are offered to guests for adequate pay;
  - (2) Contain fifty (50) or more rooms used for the sleeping accommodations of guests; and
  - (3) Contain one (1) or more public dining rooms, with adequate and sanitary full service kitchen facilities.

- (b) A hotel may consist of a single building or may consist of two (2) or more buildings located on the same premises and used in connection with the hotel operation.
- (c) A facility which is styled as a motel, motor lodge, inn, or other similar appellation may be licensed as a hotel if it meets the requirements of this Section.
- (d) Notwithstanding any other provisions of this Chapter to the contrary, any hotel (as the term “hotel” is commonly used and without regard to the requirements of this Section), inn, or other establishment which offers overnight accommodations to the public for hire, may provide “in-room service” of alcohol beverages if such establishment:
  - (1) Holds a valid City package license or a valid City consumption on the premises license or both; and
  - (2) Has been authorized to provide “in-room service” by the State.
- (e) For purposes of this Section, “in-room service” consists of:
  - (1) The delivery of alcohol beverages in unbroken packages by an employee of the hotel to a registered guest’s room when such alcohol beverages have been ordered by the guest and when the guest shall be billed for the cost of such alcohol beverages at the time of delivery and when the sale of such alcohol beverages is completed at the time of delivery; and
  - (2) The provision of a cabinet or other facility located in a hotel’s guest room which contains alcohol beverages and which is provided upon request of the guest and which is accessible by lock and key only to the guest and for which the sale of alcohol beverages contained therein is final at the time requested except for a credit which may be given to the guest for any unused portion.
- (f) Except as otherwise provided in this Section, in-room service of alcohol beverages shall be subject to all restrictions and limitations in this Chapter relative to the sale of alcohol beverages. In-room service sales shall be authorized only on such days and only during such hours as the sale of alcohol beverages is otherwise authorized.
- (g) Distilled spirits sold pursuant to this Section shall not be sold in packages containing less than fifty (50) milliliters each.
- (h) All alcohol beverages sold pursuant to this Section shall be purchased from a licensed wholesale dealer and shall be subject to all taxes imposed under this Chapter, including the excise tax on the retail sale by the drink of alcohol beverages containing distilled spirits.

### *Section 3: Restaurant*

In order to be eligible for a consumption on the premises license, a restaurant must:

- (a) Be used and held out to the public as a place where meals are regularly served to the public for adequate pay;
- (b) Contain one (1) or more public dining rooms, with adequate and sanitary full service kitchen facilities and staff to prepare, cook, and serve suitable food for its guests;
- (c) Serve at least one (1) meal per day at least five (5) days per week, with the exception of holidays, vacations, and periods of redecoration;
- (d) Prepared to serve food every hour they are open; and
- (d) Brewpubs, as defined in Article 1, Section 2(d) of this Chapter and O.C.G.A. § 3-1-2(3) shall be allowed.

### *Section 4: Lounge*

- (a) A lounge is a separate room which is:
  - (1) Connected with, a part of, and adjacent to a restaurant; or
  - (2) Located in a hotel.
- (b) In order to be eligible for a consumption on the premises license, a lounge must be arranged and maintained such that all booths, stools, and tables are open and unobstructed to the view of other customers in the lounge.
- (c) A lounge which is operated on a different floor, or in a separate building, from, or which is not connected or adjacent to, another licensed facility shall be considered a separate establishment from such other licensed facility and shall pay a separate annual license fee.

### *Section 5: Private Clubs*

- (a) In order to be eligible for a consumption on the premises license, a private club must be a nonprofit association which is organized under the laws of this State and which:
  - (1) Has been in existence at least one (1) year prior to the filing of its application for a license;
  - (2) Has at least seventy-five (75) regular dues-paying members;
  - (3) Is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes;

- (4) Owns, hires, or leases a building or space within a building for the reasonable use of its members, which building or space:
  - (A) Has suitable kitchen and dining room space and equipment;
  - (B) Is staffed with a sufficient number of employees for cooking, preparing, and serving meals for its members and guests; and
  - (C) Has no member, officer, agent, or employee directly or indirectly receiving in the form of salary or other compensation any profits from the sale of alcohol beverages beyond a fixed salary.
- (b) For purposes of subsection (a)(4)(C) of this Section, a “fixed salary” means the amount of compensation paid any member, officer, agent, or employee of a private club as may be fixed for him by its members at a prior annual meeting or by the governing body out of the general revenue of the club and shall not include any commission or any profits from the sale of alcohol beverages. Tips or gratuities added to the bills under club regulations shall not be considered profits from the sale of alcohol beverages.
- (c) No alcohol beverage license shall be granted to a private club organized or operated primarily for the selling or serving of alcohol beverages.
- (d) Veterans’ organizations, fraternal organizations, and other nonprofit organizations currently having tax exempt status under either the United States Internal Revenue Code or the state income tax law shall not be required to operate a food establishment serving prepared food; provided, however, any such organization selling or dispensing alcohol beverages shall be subject to all ordinance regulations dealing with general licensing and consumption on the premises establishments.

#### *Section 6: Special Events Facility*

In order to be eligible for a consumption on the premises license, a special events facility must:

- (a) Be available to public or private groups of persons;
- (b) For monetary consideration on a rental, fee, percentage, or similar basis, be used primarily for special occasions, including but not limited to, receptions, meetings, banquets, conventions, parties, catered events, or similar gatherings; and
- (c) Be open to or attended by invited or selected guests or paying patrons; or
- (d) Be a sport complex situated in conformance with the City’s zoning ordinances.

### *Section 7: Physical Requirements of Premises*

All lounge and restaurant areas, including all tables, booths, and other areas where customers are served and including all passageways for customers, shall be sufficiently well illuminated so that they may be viewed by those inside the premises. The sale or dispensing of alcohol beverages in any back room or side room that is not open to the general public is prohibited, except that this prohibition shall not apply with respect to:

- (a) Private parties which have been scheduled in advance;
- (b) Sales to hotel guests in their hotel rooms;
- (c) Private clubs; or
- (d) Special events facilities.

### *Section 8: Live Music and Dancing*

Bands or orchestras and patron dancing shall be permitted at facilities licensed for consumption on the premises sales only where:

- (a) Adequate space exists;
- (b) All fire and safety regulations are met;
- (c) Prior approval of the Chief of Police and the Fire Chief has been obtained.

### *Section 9: Package Sales Prohibited*

It shall be unlawful for any distilled spirits to be sold by the package from premises licensed for consumption on the premises.

### *Section 10: Carry-Out of Alcohol Beverage Unlawful*

- (a) Except as permitted pursuant to O.C.G.A. § 3-6-4 , all alcohol beverages sold or otherwise dispensed by consumption on the premises licensees shall be consumed only on the licensed premises. Subject to the above exception, it shall be unlawful for any person to remove from the licensed premises any alcohol beverages sold for consumption on the premises, and it shall be unlawful for the licensee to permit any person to remove from the licensed premises any alcohol beverages sold for consumption on the premises. The licensee shall be responsible for ensuring that no person so removes any alcohol beverages from the premises in any type of container, except as permitted by O.C.G.A. § 3-6-4.
- (b) It shall be unlawful for any person purchasing alcohol beverages for consumption on the premises to leave the premises without paying for such alcohol beverages.

### *Section 11: Bottle Clubs*

It is prohibited for any person to bring in his own spirituous liquor in any licensed retail establishment. For purposes of this Section, the term retail establishment shall not include a private hotel room or other similar guest room or a private club.

### *Section 12: "Happy Hour" Discounts; Other Unlawful Practices*

- (a) No consumption on the premises licensee shall engage in any of the following practices:
  - (1) The giving away of any alcohol beverages in conjunction with the sale of any other alcohol beverages;
  - (2) The sale of two or more alcohol beverages for a single price or the sale of all the alcohol beverages a customer can or desires to drink; provided, however, nothing herein shall prohibit offering a sampler of malt beverages or wine in containers not exceeding four (4) ounces each;
  - (3) Requiring or encouraging the purchase of a second or subsequent alcohol beverage at the same time another alcohol beverage is purchased or before the first such beverage has been consumed;
  - (4) Providing two or more alcohol beverages to a single customer who has an unconsumed alcoholic beverage;
  - (5) Selling distilled spirits in containers or glasses containing more than three (3) ounces of distilled spirits;
- (b) This Section shall not apply to private functions not open to the public with respect to which the licensee has agreed to the use of the licensee's establishment by a person, firm, or organization for a set period of time and for a valuable consideration.

## **Article 8: Excise Tax**

### *Section 1: Tax Imposed on Sale of Drinks Containing Distilled Spirits*

There is imposed upon the retail sale of drinks containing distilled spirits in the City a tax in the amount of three per cent (3%) of the purchase price of the drink to the consumer. A record of each sale shall be made in writing and maintained for inspection by any authorized agent of the City.

### *Section 2: Licensee to Collect and Remit*

Every consumption on the premises licensee shall collect the tax imposed by this article from purchasers of drinks containing distilled spirits. The licensee shall furnish such information as may be required by the City of Dunwoody to facilitate the collection of the tax.

### *Section 3: Payment and Returns by Licensee*

- (a) Each licensee shall pay over the amount of taxes collected and coming due under this Article in any calendar month to the City not later than the twentieth day of the following calendar month.
- (b) On or before the twentieth day of each month, a return for the preceding month shall be filed with the City of Dunwoody by each licensee liable for the payment of tax under this article. Returns shall be in such form as the City may specify and shall show the licensee's gross receipts from the sale of drinks containing distilled spirits and the amount of taxes collected or coming due thereon.

Any amounts collected in excess of three per cent (3%) of the taxable sales shall be reported and paid to the City.

- (c) Licensees shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if said amount is not delinquent at the time of payment. The rate of deduction shall be the same rate authorized for deductions from State sales and use tax under O.C.G.A. § 48-8-50.

### *Section 4: Excise tax - Wholesalers*

- (a) There is imposed by the City an excise tax on the first sale or use of malt beverages in the City, as follows:
  - (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of six dollars (\$6.00) on each container containing not more than fifteen and one-half (15 ½) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and one-half (15 ½) gallons;
  - (2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents (\$0.05) per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.
- (b) There is imposed by the City an excise tax on the first sale or use of wine in the City at a rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.

- (c) There is imposed by the City an excise tax on the first sale or use of distilled spirits in the City at the rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (d) The excise taxes provided for in this Section shall be imposed upon and paid by the licensed wholesale dealer. Such taxes shall be paid on or before the fifteenth (15<sup>th</sup>) day of the month following the month in which the alcohol beverages are sold or disposed of by the wholesaler within the City. Remittances shall be accompanied by completed forms as prescribed or authorized by the City of Dunwoody.

#### *Section 5: Deficiency Assessment*

- (a) If the City of Dunwoody has cause to believe that a return or the amount of tax paid to the City by a licensee is not proper, the City may compute and determine the amount due on the basis of any information available. One (1) or more deficiency determinations may be made of the amount due for any month.
- (b) The amount of a deficiency determination shall bear interest at the rate of one (1%) per cent per month, or fraction thereof, from the due date of the taxes until paid, in addition to any other penalties which may be imposed.
- (c) The City of Dunwoody shall give notice of a deficiency determination to the licensee. The notice may be served personally or by mail. Service by mail shall be addressed to the named licensee at the licensed premises, shall be made by certified mail, and is complete when delivered with a receipt signed by the addressee or by the receipt of mailing from the United States Postal Service.
- (d) Except in the case of fraud, intent to evade this Ordinance, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth (20<sup>th</sup>) day of the month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever is later.

#### *Section 6: Failure to File Return*

- (a) If a licensee fails to make a return, the City of Dunwoody shall make an estimate of the amount of the tax due for the period or periods for which a return was not filed. Such estimate may be based on any information available to the City. Written notice of the estimate shall be given to the licensee in the manner specified by subsection (c) of Section 6 of this Article.
- (b) If the failure to file a return is due to fraud or an intent to evade this Ordinance, a penalty of twenty-five per cent (25%) of the amount required to be paid by the licensee shall be added to the estimate of the amount due in addition to any other penalties which may be imposed.



### *Section 7: Interest*

Any licensee who fails to pay to the City within the time required any amount required to be paid under this article shall pay in addition to the principal unpaid amount, interest at the rate of one per cent (1%) per month or fraction thereof from the date the tax payment was last due until payment.

### *Section 8: Actions for Collection; Overpayment*

- (a) At any time within three (3) years after the delinquency of any amount due under this article, the City of Dunwoody may bring an action in the courts of this State, any other State, or the United States in the name of the City to collect the amount delinquent, together with penalties, interest, court fees, filing fees, attorneys' fees, and other legal fees incident thereto.
- (b) Whenever any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City, it may be offset against any future liability for the tax.
- (c) If the licensee determines that he has overpaid or paid more than once and such fact has not yet been determined by the City, the licensee shall have three (3) years from the date of payment to file a claim with respect to such overpayment or double payment. Such claim shall be in writing and shall state the specific grounds upon which it is based. The claim shall be audited. If the City approves the claim, the excess amount paid may be credited against any other amounts due from the licensee or refunded.

### *Section 9: Administration and Enforcement of Article*

- (a) The City of Dunwoody shall administer and enforce the provisions of this Article.
- (b) The City Manager or his designee may promulgate rules and regulations for the enforcement of this Article.
- (c) Every licensee engaging in the sale of mixed drinks shall keep such records, receipts, invoices, and other pertinent papers in such form as may be required by the City.
- (d) The City of Dunwoody may examine the books, papers, records, financial reports, equipment, and facilities of any licensee engaging in the sale of any alcohol beverage, retail or wholesale, in order to verify the accuracy of any return, or if no return is made to ascertain the amount of tax due.
- (e) In the administration of the provisions of this article, the City of Dunwoody may require the filing of reports by any person or class of persons having in their possession or custody any information relating to purchases subject to taxation under this Article.

#### *Section 10: Severability*

In the event that any one or more of the provisions contained in this Chapter shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Chapter, and this Chapter shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

### **Article 9: Penalties for Violation.**

#### *Section 1: General Penalty*

Except as may otherwise be provided in this Chapter, any person who violates an ordinance contained herein may, upon conviction, be punished by a fine of not less than Five Hundred Dollars (\$500.00) for each offense and/or up to six (6) months incarceration. Should the violation and conviction be of a State law, the punishment shall be by a fine of not less than One Thousand Dollars (\$1,000.00) and/or up to twelve (12) months incarceration.